

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH VINCENT WARD,

Petitioner,

v.

SUZANNE M. PEERY,

Respondent.

No. 2:21-cv-2220 DAD KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel, with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2018 conviction for second degree murder. Petitioner claims that the jury's verdict finding petitioner competent to stand trial was not supported by substantial evidence. (ECF No. 1 at 6.) As discussed below, petitioner's request to correct the record is denied, and he is granted an extension of time to file a reply to respondent's answer.

Notice of Error

On October 5, 2023, petitioner filed a document styled, "Notice of Error." (ECF No. 32.) Petitioner claims that on September 11, 2023, Judge Nunley stated that petitioner did not file objections, and that two of the determinations by the magistrate judge, endorsed by the judge, appear to be wrong because of that error, and asks the court to correct the record. (ECF No. 32 at 2.)

1 However, Judge Nunley is not assigned to the instant case: 2:21-cv-2220 DAD KJN.
2 Rather, petitioner appears to be referring to his subsequent filing in Ward v. Unknown, No. 2:23-
3 cv-1212 TLN DB (E.D. Cal.). In that case, petitioner claimed he had earlier mailed a habeas
4 corpus form on June 13, 2023, and forgot to include the enclosed documents, which included
5 separate claims 5, 6 and 7. Id. (ECF No. 1.) On June 29, 2023, petitioner was ordered to file a
6 complete habeas petition, noting that the filing by petitioner appeared to be intended for filing in
7 state court rather than in his pending federal habeas, case 2:21-cv-2220 DAD KJN. Unknown,
8 No. 2:23cv1212 TLN DB (ECF No. 3 at 1, n.1.) Petitioner did not respond to the order, and on
9 August 15, 2023, the assigned magistrate judge recommended that the action No. 2:23cv1212
10 TLN DB be dismissed without prejudice. On September 12, 2023, Judge Nunley adopted the
11 findings and recommendations and dismissed the action without prejudice, noting petitioner had
12 not filed objections. Id. (ECF Nos. 4, 5.)

13 On the other hand, in the instant action, case 2:21-cv-2220 DAD KJN, petitioner filed
14 objections to the June 1, 2023 findings and recommendations, and the district judge, Judge Drozd,
15 adopted the findings and recommendations over petitioner's objections. (ECF No. 25, 26.) On
16 August 11, 2023, petitioner filed a motion for reconsideration. (ECF No. 27.) On August 23,
17 2023, the district court denied petitioner's motion for reconsideration. (ECF No. 28.) Thus, the
18 record reflects that petitioner's objections and motion for reconsideration were duly filed and
19 considered by the district court in this action. Subsequently, petitioner filed an appeal, which was
20 dismissed for lack of jurisdiction on October 26, 2023. (ECF No. 33.)

21 Accordingly, the record does not support petitioner's claim of error, and his request to
22 correct the record is denied.¹

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25 ¹ Petitioner adds that he exhausted additional claims in the California Supreme Court, which
26 denied his claims on September 20, 2023, and states that the district court now has authority to
27 rule on such claims. (ECF No. 32 at 2.) However, petitioner disregards this court's prior findings
28 that he was not entitled to a stay because all seven of the proposed new claims are barred by the
statute of limitations because none of those claims relate back to petitioner's competency claim.
(ECF No. 26 at 2; see also ECF No. 24 at 5-12, adopted by ECF No. 26.)

1 Extension of Time

2 As noted above, this action proceeds on petitioner's claim that the jury's verdict finding
3 him competent to stand trial was not supported by substantial evidence. (ECF No. 1 at 6; see also
4 ECF Nos. 26 at 3, 28 at 2-3.) Following the filing of respondent's answer, petitioner did not file a
5 reply to the answer but rather sought to stay this action as explained above. Therefore, in an
6 abundance of caution, petitioner is granted twenty-one days from the date of this order to file a
7 reply to respondent's answer. Such reply is not required. If petitioner opts not to file a reply, the
8 petition will stand submitted following the expiration of this extended deadline.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner's request to correct the record (ECF No. 32) is denied; and
11 2. Within twenty-one days from the date of this order, petitioner may file a reply to
12 respondent's answer (ECF No. 10).

13 Dated: November 30, 2023

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15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE

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